

IN THE IOWA DISTRICT COURT IN AND FOR OSCEOLA COUNTY

■■■■, by and through his mother, ■■■■, and
■■■■ individually

Plaintiff,

vs.

**SIBLEY-OCHEYEDAN COMMUNITY
SCHOOL DISTRICT; MEDIAPOLIS
COMMUNITY SCHOOL DISTRICT;
SIOUX CITY COMMUNITY SCHOOL
DISTRICT; and AKRON-WESTFIELD
COMMUNITY SCHOOL DISTRICT,**

Defendants.

CASE NO. LACV020030

**PLAINTIFF'S SECOND AMENDED
PETITION AND JURY DEMAND**

COMES NOW, the Plaintiff, ■■■■, individually and on behalf of ■■■■, and for their cause of action against Defendants, state as follows:

1. Plaintiff ■■■■ is a minor having no legally appointed guardian or conservator, and brings this action by ■■■■, Plaintiff's parent and next friend.
2. Defendant Sibley-Ocheyedan County Community School District (hereinafter "SOCSD") is a school district organized under the laws of the State of Iowa and located in Osceola County, Iowa.
3. Defendant Mediapolis Community School District (hereinafter "MCSD") is a school district organized under the laws of the State of Iowa and located in Des Moines County, Iowa.
4. Defendant Sioux City Community School District (hereinafter "SCCSD") is a school district organized under the laws of the State of Iowa and located in Woodbury County, Iowa.

5. Defendant Akron-Westfield Community School District (hereinafter "AWCSD") is a school district organized under the laws of the State of Iowa and located in Plymouth County, Iowa.
6. All acts set forth in this petition at law occurred in Osceola, Woodbury, Plymouth, and Des Moines County, Iowa.
7. Plaintiff's damages satisfy the jurisdictional requirements necessary for maintaining an action in the Iowa District Court for Osceola County, Iowa.

STATEMENT OF FACTS

Plaintiff repleads the allegations asserted in paragraphs 1 through 7 as if fully set forth herein.

8. During the early morning hours on or about Saturday October 3, 2015, ten-year-old SOCSD student, ■■■■, was found sleeping on a blow-up mattress with Mr. Kyle Ewinger ("Ewinger"), a SOCSD teacher and head varsity football coach, in Ewinger's classroom at SOCSD.
9. Also found in Ewinger's room on October 3, 2015 was a bottle of KY lubricant jelly, Viagra prescription pills prescribed to "Kyle Ewinger", and Vaseline lotion.
10. Upon further investigation, it was discovered ■■■■ had slept with Ewinger Thursday night October 1, 2015 and Friday night October 2, 2015 in Ewinger's SOCSD high school classroom on the aforementioned blow-up mattress.
11. ■■■■ also showered with Ewinger at the school on the morning of October 2, 2015.
12. While on SOCSD's property, ■■■■ was sexually assaulted by Mr. Ewinger.
13. Through Ewinger's position in the community and at the school he had been grooming ■■■■ for some time prior to October 3, 2015.

14. At a summer football camp in July of 2015, SOCSD Principal Cory Jenness, witnessed Ewinger pulling his mattress into the dorm room of two young boys. Mr. Jenness did not report such observation nor conduct any follow up with the same.
15. SOCSD special education teacher, Farrah Pohlen, reported that during the school year she had witnessed Ewinger have [REDACTED] sit on his lap in the classroom.
16. Upon information and belief, Ms. Pohlen had significant boundary concerns between [REDACTED] and Ewinger.
17. Ms. Pohlen also observed, what she would describe as a “hickey” on [REDACTED]’s neck in the fall of 2015.
18. Ms. Pohlen observations were independently corroborated by another SOCSD employee.
19. Ms. Pohlen did not report such observations nor conduct any follow up with the same.
20. Upon information and belief, Ewinger, prior to coming to SOCSD, had similar conduct reported at the Mediapolis Community School District which was the basis of his departure from the Mediapolis Community School District.
21. While a teacher at the Mediapolis Community School District in 2004, Ewinger was found to be “humping” a minor Mediapolis Community School District student while the minor child sleeping.
22. Upon Mediapolis Community School Administration discovering such incident Ewinger was suspended and a “Settlement Agreement and Release Between Mediapolis Community School District and Kyle Ewinger” was executed by Ewinger and MCSD on the 30th of November 2004.
23. As a part of the Settlement Agreement, Ewinger agreed to resign from MCSD.

24. As part of the aforementioned agreement and release Ewinger would not commence litigation against MCSD in exchange for the MCSD providing a “neutral, non-negative letter that Ewinger may present to prospective employers”. Further, Ewinger would “not be eligible to be rehired in any capacity with the District nor shall the District be required to accept an application for employment from Ewinger”. Finally, the MCSD agreed to “not file a claim with the Board of Educational Examiners”.
25. It was also reported that while at the MCSD Ewinger would have young children sit on his lap and Ewinger had to be reprimanded for such occurrences.
26. Upon information and belief, Ewinger, prior to coming to SOCSO, had similar conduct while teaching at the Riverside Elementary School in Sioux City, Iowa.
27. In April of 2010 an incident occurred with a nine-year-old student at Riverside Elementary School wherein the young boy disclosed to his therapist that Ewinger had put a pill in his ice cream and told him it would help him sleep.
28. After digesting the pill in the ice cream Ewinger would lay with the boy while he slept and the young boy would report various hallucinations. (hereinafter “the ice cream incident”)
29. The aforementioned occurrence was reported to the SCCSO.
30. The aforementioned occurrence was investigated by the Iowa DHS and the Sioux City and or Woodbury County law enforcement.
31. That same month, April of 2010, the SCCSO sent a letter to Kyle Ewinger informing him that due to “numerous budget challenges this year...” Mr. Ewinger would be displaced for the next school year.

32. One month later, May of 2010, Mr. Ewinger received a letter indicating that he would be transferred away from where the young boy was being educated, Riverside Elementary School, to Crescent Park Elementary School for the 2010-2011 school year.
33. Kyle Ewinger's SCCSD employment file made no mention of the "ice cream incident".
34. Kyle Ewinger's SCCSD employment file made no mention of any DHS/police investigation.
35. SCCSD never reported "the ice cream incident" or DHS/police investigation to the Iowa Board of Education.
36. SCCSD never reported "the ice cream incident" or DHS/police investigation to any of Kyle Ewinger's subsequent employers.
37. From 2006-2008, Ewinger was employed by AWCSD as a second, third, and fourth grade classroom teacher.
38. After AWCSD hired Ewinger, AWCSD became aware of Ewinger's prior alleged inappropriate conduct, including:
 - a. That Ewinger would have a "comfy" chair in his classroom where boys would sit on Ewinger's lap;
 - b. There had been accusations of inappropriate contact between Ewinger and young male students;
 - c. Ewinger would allow students to give him neck and shoulder rubs and sit on his lap;
 - d. Ewinger would have children stay overnight and sleep on the floor with them;
 - e. There were accusations of Ewinger sucking on children's toes at the public swimming pool;

- f. At the public swimming pool Ewinger allegedly tossed the children around and sometimes get into their private areas;
 - g. Ewinger “was a best buddy and in my opinion, he wanted to be more than that”;
 - h. Middle school boys spent the night with Ewinger;
 - i. Ewinger had an unhealthy relationship with young boys;
 - j. Ewinger had children over to his house on a regular basis;
 - k. MCSD athletic director had cautioned Ewinger regarding children at his home, but the warning was ignored.
39. AWCSD implemented special safeguards to protect children due to knowledge it obtained regarding Ewinger’s past conduct and such safeguards included:
- a. Ewinger was not to e-mail or call students about anything that is non-school related;
 - b. Ewinger should not photograph students;
 - c. Ewinger should not invite students to stay overnight or take students on non-related trips; and
 - d. Ewinger should not invite students into his home unless the students are accompanied by their parents.
40. SOCSD contacted AWCSD regarding Ewinger before hiring.
41. AWCSD failed to notify SOCSD of the information they had obtained from MCSD regarding Ewinger’s prior misconduct.
42. AWCSD failed to notify SOCSD of the special procedures they had implemented for children’s protection of potential inappropriate conduct by Ewinger.
43. AWCSD’s failure to notify SOCSD lead to the hiring of Ewinger at SOCSD.

44. Mr. Ewinger is currently facing felony criminal charges Osceola County FECR006273

for the above referenced conduct. Mr. Ewinger is charged with 2nd Degree Sexual Assault, a Class B Felony, in violation of Iowa Code §709.3(1)(B).

45. Mr. Ewinger was convicted of 1st Degree Felony Sexual Assault on Child charge in Douglas County, Nebraska.

CLAIMS AGAINST SOCSD ONLY

COUNT I—NEGLIGENCE

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

46. On or about October 3, 2015, SOCSD was negligent and such negligence included, but was not limited to:

- a. failing to prevent [REDACTED] from being sexually assaulted by one of its employees on school property; and
- b. failing to properly supervise employees and their activities; and
- c. failing to maintain a safe environment for students.

47. SOCSD was also negligent in failing to ensure that the employees in charge of and supervising and protecting the students were properly trained and adequately experienced.

48. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually assaulted by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of [REDACTED], who might be expected to be injured by such conduct.

49. SOCSD's negligence was a proximate cause of the injuries and damages sustained by [REDACTED].

50. As a result of SOCSD's negligence, [REDACTED] and [REDACTED] has and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

51. Accordingly, [REDACTED] and [REDACTED] are entitled to an award of all damages.

WHEREFORE, [REDACTED] and [REDACTED] pray for judgment against SOCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained and interest as provided by law and the costs of this action.

COUNT II—NEGLIGENT HIRING

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

52. SOCSD was negligent in that it:

- a. was an employer of Ewinger; and
- b. knew, or in the exercise of ordinary care, should have known that Ewinger was unfit and posed a safety risk for the children that would be entrusted to him at the time of his hiring; and
- c. that through the negligent hiring of Ewinger his unfitness and dangerous characteristics proximately caused [REDACTED]'s and [REDACTED]'s resulting injuries.

53. As a result of SOCSD's negligence, [REDACTED] and [REDACTED] have, and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

54. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of [REDACTED] who might be expected to be injured by such conduct.

55. Accordingly, [REDACTED] and [REDACTED] are entitled to an award of all damages.

WHEREFORE [REDACTED] and [REDACTED] pray for judgment against SOCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained and interest as provided by law and the costs of this action.

COUNT III—NEGLIGENT RETENTION AND SUPERVISION

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

56. SOCSD was negligent in that it:

- a. was an employer of Ewinger; and
- b. knew, or in the exercise of ordinary care should have known, of Ewinger's unfitness and dangerous characteristics at the time he engaged in wrongful or tortious conduct; and
- c. through the negligent supervision of Ewinger, his unfitness and dangerous characteristics proximately caused injuries to [REDACTED]; and

57. As a result of SOCSD's negligence, [REDACTED] and [REDACTED] have and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

58. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of [REDACTED] who might be expected to be injured by such conduct.

59. Accordingly, [REDACTED] and [REDACTED] are entitled to an award of all damages.

WHEREFORE, [REDACTED] and [REDACTED] pray for judgment against SOCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained and interest as provided by law and the costs of this action.

COUNT IV—FAILURE TO PROTECT FROM THIRD PARTY

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

60. On October 3, 2015, [REDACTED] was injured and damaged by an employee of SOCSD by being sexually assaulted.

61. At that time, there existed between SOCSD and [REDACTED], a special relationship that imposed on SOCSD a duty to control the conduct of their employees and agents.

62. SOCSD was negligent in failing to control the conduct of their employee who sexually assaulted [REDACTED]

63. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually assaulted by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of others who might be expected to be injured by such conduct.

64. Defendant's negligence was a proximate cause of [REDACTED]'s and [REDACTED]'s injuries and damages.

65. As a result of SOCSD's negligence, [REDACTED] and [REDACTED] have and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

66. SOCSD knowingly and willingly failed to perform any measures to prevent students from being sexually by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of [REDACTED] who might be expected to be injured by such conduct.

67. Accordingly, [REDACTED] and [REDACTED] are entitled to an award of all damage.

WHEREFORE, [REDACTED] and [REDACTED] pray for judgment against SOCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained and interest as provided by law and the costs of this action.

CLAIMS AGAINST MCSD ONLY

COUNT I—NEGLIGENCE

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

68. On or about November 30, 2004, MCSD was negligent and such negligence included, but was not limited to:

- a) failing to prevent [REDACTED] from being sexually assaulted by one of its former employees;
- b) failing to properly investigate and report any incidents regarding alleged improper behavior by Ewinger with students;
- c) failing to notify future employers of Ewinger regarding his prior inappropriate behavior with students;
- d) failing to maintain a safe environment for students; and
- e) failing to report Ewinger's resignation as a result of or following an incident or allegation of misconduct and/or otherwise engaging in conduct in violation of Iowa Code section 272.15 (Iowa 2003).

69. MCSD knowingly and willingly failed to perform measures to prevent students from being sexually assaulted by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of [REDACTED], who might be expected to be injured by such conduct.

70. MCSD's negligence was a proximate cause of the injuries and damages sustained by [REDACTED].

71. As a result of MCSD's negligence, [REDACTED] and [REDACTED] has and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

72. Accordingly, [REDACTED] and [REDACTED] is entitled to an award of all damages.

WHEREFORE, [REDACTED]. and [REDACTED] pray for judgment against MCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained and interest as provided by law and the costs of this action.

CLAIMS AGAINST SCCSD ONLY

COUNT I—NEGLIGENCE

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

73. On or about May 19, 2010, SCCSD was negligent and such negligence included, but was not limited to:

- a) failing to prevent [REDACTED] from being sexually assaulted by one of its former employees;
- b) failing to properly investigate and report any incidents regarding alleged improper behavior by Ewinger with students;
- c) failing to notify future employers of Ewinger regarding his prior inappropriate behavior with students and;
- d) failing to maintain a safe environment for students.

74. SCCSD knowingly and willingly failed to perform measures to prevent students from being sexually assaulted by Ewinger; in a wanton and reckless or grossly negligent disregard for the safety of [REDACTED], who might be expected to be injured by such conduct.

75. SCCSD's negligence was a proximate cause of the injuries and damages sustained by [REDACTED]

76. As a result of SCCSD's negligence, [REDACTED]. and [REDACTED] has and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

77. Accordingly, [REDACTED] and [REDACTED] is entitled to an award of all damages.

WHEREFORE, [REDACTED] and [REDACTED] pray for judgment against SCCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained and interest as provided by law and the costs of this action.

CLAIMS AGAINST AWCSD ONLY

COUNT I—NEGLIGENCE

Plaintiffs replead the allegations asserted in all paragraphs as if fully set forth herein.

78. AWCSD was negligent and such negligence included, but was not limited to:

- a) failing to prevent [REDACTED] from being sexually assaulted by one of its former employees;
- b) failing to properly report any incidents regarding alleged improper behavior by Ewinger with students; and
- c) failing to notify future employers of Ewinger regarding prior allegations of inappropriate behavior with students.

79. AWCSD knowingly and willingly failed to perform measures to prevent students from being sexually assaulted by Ewinger.

80. AWCSD's negligence was a proximate cause of the injuries and damages sustained by [REDACTED]

81. As a result of AWCSD's negligence, [REDACTED] and [REDACTED] has and will continue to sustain damages which include but are not limited to: physical pain and suffering; severe emotional pain and suffering; and medical expenses.

82. Accordingly, [REDACTED] and [REDACTED] is entitled to an award of all damages.

WHEREFORE, [REDACTED] and [REDACTED] pray for judgment against AWCSD in an amount which will fully and fairly compensate them for their injuries and damages that were sustained and interest as provided by law and the costs of this action.

JURY DEMAND

Plaintiffs hereby requests trial by jury for all claims and issues asserted herein.

Respectfully Submitted:

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